



#7 Patents

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Houston, et al.

Serial No.: 09/844,448

Filing Date: April 27, 2001

Title: Method and System for Managing  
Security Events on a Network

Art Unit: 2131

09/27/2001 PREPARING 00000000 09044448

05 FC:122

130.00 OF

PETITION FOR FILING BY OTHER THAN ALL THE INVENTORS UNDER  
37 C.F.R. 1.47(a)

Assistant Commissioner of Patents  
Washington, D.C. 20231

RECEIVED

NOV 09 2001

September 21, 2001

Dear Sir:

OFFICE OF PETITIONS  
DEPUTY A/C PATENTS

Applicant, Internet Security Systems, Inc., (hereinafter "ISS") hereby petitions the Commissioner to accept the filing of the above-identified U.S. Patent Application by it, as the party to which the invention disclosed and claimed in said Patent Application rightfully belongs, and on behalf of and as agent for two of the inventors who have not executed the papers required to perfect the filing of the present application.

ISS filed the Patent Application on April 27, 2001, without the inventors' Declarations and Powers of Attorney. On June 21, 2001, the Patent Office mailed a Notice to File Missing Parts of Nonprovisional Application to ISS's counsel of record, King & Spalding. Responsive to

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231, on September 21, 2001.

Robert T. Neufeld, Reg. No. P-48,394

this Notice, ISS is filing this Petition, Declarations and Powers of Attorney, and an Assignment from certain inventors.

An Affidavit with attached documentary evidence is also submitted to: (1) provide proof of the pertinent facts concerning the refusal of one inventor to join in the present application for patent; (2) establish the unavailability of another inventor; and (3) establish that ISS has a sufficient proprietary interest in this matter to make applications on behalf of and as agent for the absent inventors, and showing that such action is necessary to preserve the rights of the parties and to prevent irreparable damage.

The names and last known addresses of the two (2) inventors absent from this application are as follows:

Christian D. Kobsa  
980 Walther Boulevard  
Apartment 1033  
Lawrenceville, Georgia 30043

Sridhar Embar  
6871 Peachtree Dunwoody Road  
Apartment No. 244  
Atlanta, Georgia 30328

The present invention was developed under the authorization of ISS by Christian Kobsa and Sridhar Embar, among others, who were employed and/or directed during their employment to do so.

Upon information and belief, based on the precedent which will be discussed below and upon written employment contracts between ISS and the absent inventors, ISS is entitled to clear title to the invention, to the Patent Application, and to any patent which issues thereon.

In that regard, the Supreme Court of the United States in Solomons v. United States, 137 U.S. 342, 346 (1890), held:

If one is employed to devise or perfect an instrument, or a means for accomplishing a prescribed result, he cannot, after successfully accomplishing the work for which he was employed, plead title thereto as against his employer. That which he has been employed and paid to accomplish become, when accomplished, the property of his employer. Whatever rights as an individual he may have had in and to his inventive powers, and that which they are able to accomplish, he has sold in advance to his employer.

This basic tenet of patent law has been reaffirmed by the courts numerous times, including the decision of the Federal Circuit in Teets v. Chromalloy Gas Turbine Corp., 83 F.3d 403 (Fed. Cir. 1996), which held:

[E]mployers may still claim an employee's inventive work where the employer specifically hires or directs the employee to exercise inventive faculties. . . . When the purpose for employment thus focuses on invention, the employee has received full compensation for his or her inventive work.

Id. at 407 (citations omitted).

It is clear that an employee that is paid to develop an invention comes within the scope of the language cited above. In this case, both refusing inventors were either hired and/or directed to develop the invention that is the subject of the Patent Application. Specifically, both refusing inventors, at ISS's request, conceived and reduced to practice the present invention which resulted in the Patent Application, and were paid for these efforts.

Moreover, both inventors have express contractual obligations that entitle ISS to ownership of the present invention and the Patent Application. First, with respect to inventor Embard, ISS is entitled to ownership of the present invention pursuant to an agreement, attached to the accompanying Affidavit of Sheila A. Burks, executed on or about September 30, 1999. That agreement provides, in relevant part, as follows:

Employee acknowledges and agrees that all Work Product is the sole and exclusive property of the Company. Employee agrees to assign, and hereby automatically assigns, without further consideration, to the Company any and all rights, title, and interest in and to all Work Product . . . .

With respect to inventor Kobsa, ISS is entitled to ownership of the present invention pursuant to an agreement, attached hereto, executed on September 20, 1999. That agreement contains, in relevant part, the same provision set forth above from Mr. Embar's agreement.

Clearly, under these written agreements, ISS is entitled to ownership of the present invention and the Patent Application.

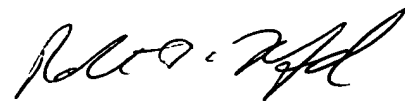
At this time, inventors Embar and Kobsa no longer are employed at ISS. Inventor Embar has been presented with multiple copies of the papers required for filing the Patent Application, but refuses to return the papers to ISS. ISS has attempted to locate Inventor Kobsa to present the paperwork to him, but has been unable to.

Pursuant to the precedent cited above and its written agreements with the refusing inventors, ISS believes that it is entitled to make such application on behalf of and as agent for the absent inventors pursuant to 37 C.F.R. § 1.47(b).

Thus, ISS respectfully requests that the Commissioner grant this Petition and accept filing of the Patent Application.

The required fee pursuant to § 1.17(i) is enclosed.

Respectfully submitted,



Robert T. Neufeld  
Reg. No. P-48,394

Serial No. 09/844,448

King & Spalding  
45<sup>th</sup> Floor  
191 Peachtree Street, N.E.  
Atlanta, Georgia 30303  
404.572.4600  
K&S Docket: 05456.105005



#

## PATENTS

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Houston et al.

**Serial No.: 09/844,448**

**Filed: April 27, 2001**

**Title: Method and System for Managing Security Events on a Network**

**Art Unit: 2131**

## AFFIDAVIT OF SHEILA A. BURKS

Assistant Commissioner of Patents  
Washington, DC 20231

September 20, 2001

Dear Sir:

State of Georgia  
County of Fulton

Sheila A. Burks, being duly sworn, and having personal knowledge of the facts set forth herein, hereby deposes and says that:

1. I am employed as Senior Counsel of Internet Security Systems, Inc. (hereinafter “ISS”) of Atlanta, Fulton County, Georgia.
2. During 1999 and 2000, Christian D. Kobsa and Sridar Embar were employed at ISS and contributed to technology disclosed and claimed in United States Patent Application No.

09/844,448, filed on April 27, 2001, and entitled "Method and System for Managing Security Events on a Network."

3. I authorized preparation of the above-captioned patent application (hereinafter "Patent Application") by our patent counsel, King & Spalding, on behalf of ISS.

4. At the time the Patent Application was completed and ready for execution, Mr. Kobsa and Mr. Embar no longer were employed at ISS.

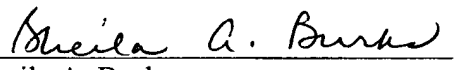
5. The Patent Application was filed by ISS on April 27, 2001, without the required inventors' Declarations and Powers of Attorney. On June 21, 2001, the Patent Office mailed a Notice to File Missing Parts of Nonprovisional Application to ISS's counsel of record, King & Spalding.

6. ISS has made a bona fide effort to have Mr. Kobsa execute the Declaration and Power of Attorney. I have attempted to call Mr. Kobsa at his last known home telephone number and at a relative's telephone number, but was unable to locate him at either number. I have also sent a copy of the Declaration and Power of Attorney to Mr. Kobsa, via certified mail on August 30, 2001, to his last known address. See Exhibit A. The mail was returned and no forwarding address is available.

7. ISS has made a bona fide attempt to have Mr. Embar execute the Declaration and Power of Attorney, but he apparently refuses. I have spoken with Mr. Embar over the telephone regarding execution of the Declaration and Power of Attorney and mailed the document to him on August 27, 2001. See Exhibit B. After receiving no response from Mr. Embar, I sent another copy of the Declaration and Power of Attorney to him on September 12, 2001. See Exhibit C. Mr. Embar has failed to return the document or to respond to my letters.

8. Both Mr. Kobsa and Mr. Embar executed agreements that entitle ISS to ownership of the inventions disclosed in the Patent Application. These agreements are attached hereto as Exhibits D and E.

9. Pursuant to the Patent Office's Notice to File Missing Parts, it is now necessary for ISS to file the accompanying Petition to perfect its filing of the Patent Application, to protect its legitimate rights in the present invention, and to prevent irreparable damage to ISS.

  
Sheila A. Burks  
Senior Counsel, Internet Security Systems, Inc.

Sworn to and subscribed  
before me, this 20  
day of September, 2001.

  
NOTARY PUBLIC

My Commission Expires:

[NOTARY SEAL]

AUDRA J. OUELLETTE  
Notary Public, DeKalb County, Georgia  
My Commission Expires Sept. 7, 2002.



U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
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 08  
 AUG 31 2001  
 08/31/2001  
 PS 31153

**INTERNET  
 SECURITY  
 SYSTEMS**

August 30, 2001

Sent To  
 Mr. Christian Kobsa  
 Street, Apt. No.,  
 or PO Box No. 980 Walther Blvd. Apt. 1033  
 City, State, ZIP+4  
 Lawrenceville GA 30043  
 PS Form 3800 January 2001 See Reverse for Instructions

**VIA CERTIFIED MAIL  
 RETURN RECEIPT REQUESTED**

Mr. Christian D. Kobsa  
 980 Walther Boulevard  
 Apartment 1033  
 Lawrenceville, GA 30043

Re: Patent Assignment

Dear Mr. Kobsa:

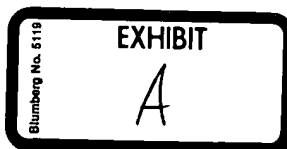
I enclose for your signature the assignment to Internet Security Systems of your rights in the patent application entitled "System and Method for Managing Security Events on a Network", which you worked on while employed by ISS. Please execute this form before a notary public, who will then attest that you are who you are. If you like, you can arrange to come here and execute the form before an ISS notary. Just call me beforehand so that I can arrange to have someone available. I have also enclosed the declaration and power of attorney form, which authorizes the attorneys at King & Spalding, ISS' patent counsel, to file the assignment.

I enclose a self-addressed, stamped envelop so that you can return these documents to me directly as well as a copy of them for your records. Please ensure that I receive them by Monday, September 10, 2001. Should you have questions about this matter, please do not hesitate to contact me at 404 236 4079. I appreciate your assistance with this matter.

Sincerely yours,

INTERNET SECURITY SYSTEMS, INC.

/s/  
 Sheila A. Burks  
 Senior Counsel





# INTERNET SECURITY SYSTEMS

August 27, 2001

Mr. Sridhar Embar  
6871 Peachtree Dunwoody Road  
No. 244  
Atlanta, GA 30328

Re: Patent Assignment

Mr. Embar:

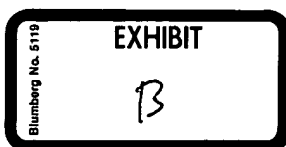
As we discussed on Friday, I enclose for your signature the assignment to Internet Security Systems of your rights in the patent application entitled "System and Method for Managing Security Events on a Network", which you worked on while employed by ISS. Please execute this form before a notary public, who will then attest that you are who you are. If you like, you can arrange to come here and execute the form before an ISS notary. Just call me beforehand so that I can arrange to have someone available. I have also enclosed the declaration and power of attorney form, which authorizes the attorneys at King & Spalding, ISS' patent counsel, to file the assignment.

I enclose a self-addressed, stamped envelop so that you can return these documents to me directly as well as a copy of them for your records. Should you have questions about this matter, please do not hesitate to contact me at 404 236 4079. I appreciate your assistance with this matter.

Sincerely yours,

INTERNET SECURITY SYSTEMS, INC.

Sheila A. Burks  
Senior Counsel



**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

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\$ 10.57

Certified Fee

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Return Receipt Fee  
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Restricted Delivery Fee  
(Endorsement Required)

\$ 0.00

Total postage &amp; Fees

\$ 14.17

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Postmark  
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09/12/2001


**INTERNET  
SECURITY  
SYSTEMS**

September 12, 2001

Addressee (Please Print Clearly) (to be completed by mailer)

Sridhar Embar

Street, Apt. No., or P.O. Box No.

6871 Peachtree Dunwoody Rd. #244

City, State, ZIP+4

Atlanta, GA 30328

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. Sridhar Embar  
 6871 Peachtree Dunwoody Road  
 Apt. No. 244  
 Atlanta, GA 30328

Re: Patent Assignment

Dear Mr. Embar:

On August 27, on behalf of Internet Security Systems, I sent you a letter enclosing materials in connection with the assignment of your rights to the patent application entitled "System and Method for Managing Security Events on a Network", which you worked on while employed by ISS. I have included another copy of these materials with this letter for your consideration because as of today, I have not received your response.

Please execute this assignment form before a notary public, who will then attest that you are who you are. If you like, you can arrange to come here and execute the form before an ISS notary. Just call me beforehand so that I can arrange to have someone available. I have also enclosed the declaration and power of attorney form, which authorizes the attorneys at King & Spalding, ISS' patent counsel, to file the assignment.

Please return these documents to me directly as well as a copy of them for your records. Please ensure that I receive them by Wednesday, September 19, 2001. Should you have questions about this matter, please do not hesitate to contact me at 404 236 4079. I appreciate your assistance with this matter.

Sincerely yours,

INTERNET SECURITY SYSTEMS, INC.

//s//

Sheila A. Burks  
 Senior Counsel



**AGREEMENT ON CONFIDENTIALITY,  
WORK PRODUCT, AND NONSOLICITATION**

IN CONSIDERATION of and as a condition to Employee's employment or continued employment, training, pay, and other benefits provided by INTERNET SECURITY SYSTEMS, INC. and/or its subsidiaries, parents, and affiliates (collectively, the "Company") and other good and valuable consideration, the sufficiency of which is hereby acknowledged,

SRIDHAR EMBAR ("Employee") and the Company agree as follows:

**Section I. Definitions.**

For purposes of this Agreement, the following definitions apply:

(a) "Confidential Information" means any data or information, other than Trade Secrets, that is valuable to the Company or to the Company's customers or other third parties entrusting such information to the Company (the "Associated Companies") and not generally known to the public or to competitors of the Company or of the Associated Companies.

(b) "Nondisclosure Period" means the period beginning on the date of this Agreement and ending two years after the date Employee's employment with the Company ends or is terminated for any reason.

(c) "Nonsolicitation Period" means the period beginning on the date of this Agreement and ending two years after the date Employee's employment with the Company ends or is terminated for any reason.

(d) "Restricted Businesses" means the development, manufacture, distribution, and/or sale of network security management software systems, including enterprise-wide information protection software.



(e) "Trade Secret" means information including, but not limited to, any technical or nontechnical data, formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, financial plan, product plan, list of actual or potential customers or suppliers or other information similar to any of the foregoing, which (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

## Section II. Trade Secrets and Confidential Information.

2.1 Trade Secrets. Employee shall hold in confidence all Trade Secrets of the Company or any of the Associated Companies that came into Employee's knowledge during his or her employment by the Company and shall not disclose, publish or make use of such Trade Secrets at any time after the date hereof, on behalf of Employee or any other person or entity, without the prior written consent of the Company for as long as the information remains a Trade Secret. Employee further acknowledges that theft of Trade Secrets is a crime under the federal Economic Espionage Act of 1996, 18 U.S.C. §§ 1831-1839, and many state laws and that persons engaging in such misappropriation may be subject to imprisonment and/or fines.

2.2 Confidential Information. During the Nondisclosure Period, Employee will hold in confidence all Confidential Information that came into Employee's knowledge during his or her employment by the Company and will not disclose, publish or make use of such Confidential Information, on behalf of Employee or any other person or entity, without the prior written consent of the Company. The restrictions contained in this paragraph will not apply in the event.

that the information becomes available to the general public other than through the act or omission of Employee.

2.3 Return of Materials. Upon the request of the Company and, in any event, upon the termination of Employee's employment with the Company, Employee shall deliver to the Company all memoranda, notes, records, manuals or other documents (including, but not limited to, written instruments, voice or data recordings, or computer tapes, disks or files of any nature), including all copies of such materials and all documentation prepared or produced in connection therewith, pertaining to the performance of Employee's services for the Company, the business of the Company or of the Associated Companies, or containing Trade Secrets or Confidential Information regarding the Company's business or the Associated Companies' business, whether made or compiled by Employee or furnished to Employee by virtue of his or her employment with the Company. Employee shall also deliver to the Company all computers, credit cards, telephones, office equipment, software, and other property the Company furnished to Employee by virtue of his or her employment with the Company.

2.4 Interpretation. The restrictions stated in paragraphs 2.1 and 2.2 are in addition to and not in lieu of protections afforded to trade secrets and confidential information under applicable state law. Nothing in this Agreement is intended to or shall be interpreted as diminishing or otherwise limiting the Company's right under applicable state law to protect its trade secrets and confidential information.

### Section III. Nonsolicitation.

3.1 Nonsolicitation of Customers. Employee hereby covenants and agrees that he or she will not, during the Nonsolicitation Period, without the prior written consent of the Company,

solicit, directly or indirectly, any business related to the Restricted Businesses from any of the Company's customers, including actively sought prospective customers, with whom Employee had personal business contact during his or her employment with the Company. Employee agrees and acknowledges that the identity of such customers and lists of such customers are Trade Secrets of the Company.

3.2 Nonsolicitation of Employees. Employee hereby covenants that he or she will not, during the Nonsolicitation Period, without the prior written consent of the Company, solicit or attempt to solicit for employment for or on behalf of any corporation, partnership, venture or other business entity any person who, on the last day of Employee's employment with the Company or within 12 months prior to that date, was employed by the Company or its direct or indirect subsidiaries, parents, or affiliates and with whom Employee had personal business contact during the course of his or her employment with the Company (whether or not such person would commit a breach of contract by accepting such employment).

#### Section IV. Prior Knowledge and Relationships.

4.1 Prior Knowledge and Inventions. Except as disclosed on Schedule A to this Agreement, Employee has obtained no knowledge of the Company's confidential information prior to his or her employment with the Company. Employee has also disclosed on Schedule A a complete list of all inventions proprietary to Employee that were made or first reduced to practice by Employee prior to his or her employment with the Company.

4.2 Prior Commitments. Employee has no other agreements, relationships, or commitments to any other person or entity that conflict with Employee's obligations to the Company under this Agreement.

## Section V. Ownership of Employee Developments.

### 5.1 Ownership of Work Product

(a) Employee agrees to promptly report and disclose to the Company in writing all developments, discoveries, methods, processes, designs, inventions, ideas, or improvements (hereinafter collectively called "Work Product"), conceived, made, implemented, or reduced to practice by Employee, whether alone or acting with others, whether or not patentable or registerable under copyright or similar statutes, during Employee's period of employment by the Company, that is developed (i) during Employee's working hours with the Company, or (ii) while utilizing, directly or indirectly, the Company's equipment, supplies, facilities, or trade secret information. Employee acknowledges and agrees that all Work Product is the sole and exclusive property of the Company. Employee agrees to assign, and hereby automatically assigns, without further consideration, to the Company any and all rights, title, and interest in and to all Work Product; *provided however*, that this Paragraph shall not apply to any Work Product for which no equipment, supplies, facilities, or trade secret information of the Company was used and which was developed entirely on Employee's own time, unless (i) the Work Product (a) comes within the scope of the business of the Company or (b) relates to the Company's products or its actual or demonstrably anticipated research or development; or (ii) the Work Product arose from or was developed in the scope of Employee's employment with the Company.

(b) The Company, its successors and assigns, shall have the right to obtain and hold in its or their own name copyright registrations, trademark registrations, patents and any other protection available to the Company with respect to the Work Product.



5.2 Cooperation. Employee agrees to perform, upon the reasonable request of the Company, during and after employment, such further acts as may be necessary or desirable to transfer, perfect, and defend the Company's ownership of the Work Product, including but not limited to: (a) executing, acknowledging, and delivering any requested affidavits and documents of assignment and conveyance; (b) assisting in the preparation, prosecution, procurement, maintenance and enforcement of all copyrights and/or patents with respect to the Work Product in any countries; (c) providing truthful testimony in connection with any proceeding affecting the right, title, or interest of the Company in any Work Product; and (d) performing any other acts deemed necessary or desirable to carry out the purposes of this Agreement. The Company shall reimburse all reasonable out-of-pocket expenses incurred by Employee at the Company's request in connection with the foregoing.

Section VI. Reasonable and Necessary Restrictions.

6.1 Employee acknowledges that during the course of his or her employment with the Company Employee has received or may receive and has had or may have access to Confidential Information and Trade Secrets of the Company and of the Associated Companies, possibly including but not limited to confidential and secret business and marketing plans, strategies, and studies, detailed product information or product development information, detailed client/customer lists, and information relating to the operations and business requirements of those clients/customers. Accordingly, Employee is willing to enter into the covenants contained in this Agreement in order to provide the Company with what Employee considers to be reasonable protection for its interests.

6.2 Employee acknowledges that the restrictions, prohibitions and other provisions in this Agreement are reasonable, fair, and equitable in scope, terms, and duration; are necessary to protect the legitimate business interests of the Company; and are a material inducement to the Company to employ or continue to employ Employee. Employee covenants that he or she will not challenge the enforceability of this Agreement nor will Employee raise any equitable defense to its enforcement.

**Section VII. Restricted Business Practices.**

It is the policy of the Company not to receive any confidential or proprietary information from any employee arising in connection with the former employment of said employee, irrespective of whether such information was received purposely or inadvertently. Employee is expressly prohibited from having said confidential or proprietary information on any Company property. Employee warrants that he or she has no information, whether written, oral, tangible, or intangible, which can be construed as the property of a former employer, and further that Employee will make no use of any such information in the performance of Employee's duties on behalf of the Company.

**Section VIII. Current Employment.**

Employee shall not, during his or her employment with the Company, engage in any work or other activity as a principal, agent, consultant, employee, or otherwise, in any field or fields in which Employee is working or has worked as an Employee of the Company, without first obtaining the written consent of the Company.

**Section IX. Severability.**

In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, shall not be affected thereby. In such event, the affected provision will be deemed modified to the extent necessary to render such provision enforceable, and the rights and obligations of the parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent of the parties.

**Section X. Governing Law.**

This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating to this Agreement, shall be governed by and construed in accordance with the laws of the State of Georgia, not including the choice-of-law rules thereof.

**Section XI. Nature of Employment.**

Employee understands and agrees that nothing in this Agreement is intended to or shall be interpreted as creating a contract or employment for a specified period of time. Employee further understands and agrees that his or her employment with the Company shall be employment-at-will, which can be terminated at any time, without prior notice or cause, by either Employee or the Company. No act, statement or conduct, of any nature whatsoever, of any representative of the Company shall alter the nature of Employee's at-will employment unless it is in writing, specifically refers to and supersedes this section, and is signed by an officer of the Company.

**Section XII. Amendment; Waiver.**

No amendment, modification, or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed by each of the parties hereto. Any waiver by any party or consent by any party to any breach of or any variation from any provision of this Agreement shall be valid only if in writing and only in the specific instance in which it is given, and such waiver or consent shall not be construed as a waiver of any subsequent breach or any other provision or as a consent with respect to any similar instance or circumstance.

**Section XIII. Entire Agreement.**

This Agreement, including Schedule A, constitutes and expresses the entire agreement of the parties hereto concerning its subject matter. There are no agreements, written or oral, express or implied, between the parties hereto, concerning the subject matter hereof, except the agreement set forth in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the earliest date written below.

Date: 9/30/99

INTERNET SECURITY SYSTEMS, INC.

By: Mukul Babin  
Name: Gerald Babin  
Title: HR Administrator

Date: 9/21/99

9/30/99

8

EMPLOYEE

Sridhar  
Signature

SRIDHAR EMBAR  
Print Name

592-02-0016  
Social Security Number

SCHEDULE A

1. Confidential Information. Except as set forth below, I acknowledge at this time that I learned nothing about the business or the Confidential Information or Inventions of the Company or the Associated Companies prior to my employment with the Company (if none, so state):

NONE

2. Prior Inventions. Except as set forth below, I acknowledge at this time that I have not, prior to my employment with the Company, made or reduced to practice (alone or jointly with others) any Inventions (if none, so state):

NONE

3. Conflicting Relationships. Except as set forth below, I acknowledge that I have no current or prior agreements, relationships, or commitments that conflict with my relationship with the Company under this Agreement (if none, so state):

NONE

DATE:

9/21/99

Signature



Print Name

SRIDHAR EMBAR

Social Security Number

592 - 02 - 0016

**AGREEMENT ON CONFIDENTIALITY,  
WORK PRODUCT, AND NONSOLICITATION**

IN CONSIDERATION of and as a condition to Employee's employment or continued employment, training, pay, and other benefits provided by INTERNET SECURITY SYSTEMS, INC. and/or its subsidiaries, parents, and affiliates (collectively, the "Company") and other good and valuable consideration, the sufficiency of which is hereby acknowledged,

Christian D. Kober ("Employee") and the Company agree as follows:

**Section I. Definitions.**

For purposes of this Agreement, the following definitions apply:

(a) "Confidential Information" means any data or information, other than Trade Secrets, that is valuable to the Company or to the Company's customers or other third parties entrusting such information to the Company (the "Associated Companies") and not generally known to the public or to competitors of the Company or of the Associated Companies.

(b) "Nondisclosure Period" means the period beginning on the date of this Agreement and ending two years after the date Employee's employment with the Company ends or is terminated for any reason.

(c) "Nonsolicitation Period" means the period beginning on the date of this Agreement and ending two years after the date Employee's employment with the Company ends or is terminated for any reason.

(d) "Restricted Businesses" means the development, manufacture, distribution, and/or sale of network security management software systems, including enterprise-wide information protection software.

(e) "Trade Secret" means information including, but not limited to, any technical or nontechnical data, formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, financial plan, product plan, list of actual or potential customers or suppliers or other information similar to any of the foregoing, which (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

## Section II. Trade Secrets and Confidential Information.

2.1 Trade Secrets. Employee shall hold in confidence all Trade Secrets of the Company or any of the Associated Companies that came into Employee's knowledge during his or her employment by the Company and shall not disclose, publish or make use of such Trade Secrets at any time after the date hereof, on behalf of Employee or any other person or entity, without the prior written consent of the Company for as long as the information remains a Trade Secret. Employee further acknowledges that theft of Trade Secrets is a crime under the federal Economic Espionage Act of 1996, 18 U.S.C. §§ 1831-1839, and many state laws and that persons engaging in such misappropriation may be subject to imprisonment and/or fines.

2.2 Confidential Information. During the Nondisclosure Period, Employee will hold in confidence all Confidential Information that came into Employee's knowledge during his or her employment by the Company and will not disclose, publish or make use of such Confidential Information, on behalf of Employee or any other person or entity, without the prior written consent of the Company. The restrictions contained in this paragraph will not apply in the event



that the information becomes available to the general public other than through the act or omission of Employee.

2.3 Return of Materials. Upon the request of the Company and, in any event, upon the termination of Employee's employment with the Company, Employee shall deliver to the Company all memoranda, notes, records, manuals or other documents (including, but not limited to, written instruments, voice or data recordings, or computer tapes, disks or files of any nature), including all copies of such materials and all documentation prepared or produced in connection therewith, pertaining to the performance of Employee's services for the Company, the business of the Company or of the Associated Companies, or containing Trade Secrets or Confidential Information regarding the Company's business or the Associated Companies' business, whether made or compiled by Employee or furnished to Employee by virtue of his or her employment with the Company. Employee shall also deliver to the Company all computers, credit cards, telephones, office equipment, software, and other property the Company furnished to Employee by virtue of his or her employment with the Company.

2.4 Interpretation. The restrictions stated in paragraphs 2.1 and 2.2 are in addition to and not in lieu of protections afforded to trade secrets and confidential information under applicable state law. Nothing in this Agreement is intended to or shall be interpreted as diminishing or otherwise limiting the Company's right under applicable state law to protect its trade secrets and confidential information.

### Section III. Nonsolicitation.

3.1 Nonsolicitation of Customers. Employee hereby covenants and agrees that he or she will not, during the Nonsolicitation Period, without the prior written consent of the Company,

solicit, directly or indirectly, any business related to the Restricted Businesses from any of the Company's customers, including actively sought prospective customers, with whom Employee had personal business contact during his or her employment with the Company. Employee agrees and acknowledges that the identity of such customers and lists of such customers are Trade Secrets of the Company.

3.2 Nonsolicitation of Employees. Employee hereby covenants that he or she will not, during the Nonsolicitation Period, without the prior written consent of the Company, solicit or attempt to solicit for employment for or on behalf of any corporation, partnership, venture or other business entity any person who, on the last day of Employee's employment with the Company or within 12 months prior to that date, was employed by the Company or its direct or indirect subsidiaries, parents, or affiliates and with whom Employee had personal business contact during the course of his or her employment with the Company (whether or not such person would commit a breach of contract by accepting such employment).

#### Section IV. Prior Knowledge and Relationships.

4.1 Prior Knowledge and Inventions. Except as disclosed on Schedule A to this Agreement, Employee has obtained no knowledge of the Company's confidential information prior to his or her employment with the Company. Employee has also disclosed on Schedule A a complete list of all inventions proprietary to Employee that were made or first reduced to practice by Employee prior to his or her employment with the Company.

4.2 Prior Commitments. Employee has no other agreements, relationships, or commitments to any other person or entity that conflict with Employee's obligations to the Company under this Agreement.

## Section V. Ownership of Employee Developments.

### 5.1 Ownership of Work Product

(a) Employee agrees to promptly report and disclose to the Company in writing all developments, discoveries, methods, processes, designs, inventions, ideas, or improvements (hereinafter collectively called "Work Product"), conceived, made, implemented, or reduced to practice by Employee, whether alone or acting with others, whether or not patentable or registerable under copyright or similar statutes, during Employee's period of employment by the Company, that is developed (i) during Employee's working hours with the Company, or (ii) while utilizing, directly or indirectly, the Company's equipment, supplies, facilities, or trade secret information. Employee acknowledges and agrees that all Work Product is the sole and exclusive property of the Company. Employee agrees to assign, and hereby automatically assigns, without further consideration, to the Company any and all rights, title, and interest in and to all Work Product; *provided however*, that this Paragraph shall not apply to any Work Product for which no equipment, supplies, facilities, or trade secret information of the Company was used and which was developed entirely on Employee's own time, unless (i) the Work Product (a) comes within the scope of the business of the Company or (b) relates to the Company's products or its actual or demonstrably anticipated research or development; or (ii) the Work Product arose from or was developed in the scope of Employee's employment with the Company.

(b) The Company, its successors and assigns, shall have the right to obtain and hold in its or their own name copyright registrations, trademark registrations, patents and any other protection available to the Company with respect to the Work Product.

5.2 Cooperation. Employee agrees to perform, upon the reasonable request of the Company, during and after employment, such further acts as may be necessary or desirable to transfer, perfect, and defend the Company's ownership of the Work Product, including but not limited to: (a) executing, acknowledging, and delivering any requested affidavits and documents of assignment and conveyance; (b) assisting in the preparation, prosecution, procurement, maintenance and enforcement of all copyrights and/or patents with respect to the Work Product in any countries; (c) providing truthful testimony in connection with any proceeding affecting the right, title, or interest of the Company in any Work Product; and (d) performing any other acts deemed necessary or desirable to carry out the purposes of this Agreement. The Company shall reimburse all reasonable out-of-pocket expenses incurred by Employee at the Company's request in connection with the foregoing.

Section VI. Reasonable and Necessary Restrictions.

6.1 Employee acknowledges that during the course of his or her employment with the Company Employee has received or may receive and has had or may have access to Confidential Information and Trade Secrets of the Company and of the Associated Companies, possibly including but not limited to confidential and secret business and marketing plans, strategies, and studies, detailed product information or product development information, detailed client/customer lists, and information relating to the operations and business requirements of those clients/customers. Accordingly, Employee is willing to enter into the covenants contained in this Agreement in order to provide the Company with what Employee considers to be reasonable protection for its interests.

6.2 Employee acknowledges that the restrictions, prohibitions and other provisions in this Agreement are reasonable, fair, and equitable in scope, terms, and duration; are necessary to protect the legitimate business interests of the Company; and are a material inducement to the Company to employ or continue to employ Employee. Employee covenants that he or she will not challenge the enforceability of this Agreement nor will Employee raise any equitable defense to its enforcement.

**Section VII. Restricted Business Practices.**

It is the policy of the Company not to receive any confidential or proprietary information from any employee arising in connection with the former employment of said employee, irrespective of whether such information was received purposely or inadvertently. Employee is expressly prohibited from having said confidential or proprietary information on any Company property. Employee warrants that he or she has no information, whether written, oral, tangible, or intangible, which can be construed as the property of a former employer, and further that Employee will make no use of any such information in the performance of Employee's duties on behalf of the Company.

**Section VIII. Current Employment.**

Employee shall not, during his or her employment with the Company, engage in any work or other activity as a principal, agent, consultant, employee, or otherwise, in any field or fields in which Employee is working or has worked as an Employee of the Company, without first obtaining the written consent of the Company.

**Section IX. Severability.**

In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, shall not be affected thereby. In such event, the affected provision will be deemed modified to the extent necessary to render such provision enforceable, and the rights and obligations of the parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent of the parties.

**Section X. Governing Law.**

This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating to this Agreement, shall be governed by and construed in accordance with the laws of the State of Georgia, not including the choice-of-law rules thereof.

**Section XI. Nature of Employment.**

Employee understands and agrees that nothing in this Agreement is intended to or shall be interpreted as creating a contract or employment for a specified period of time. Employee further understands and agrees that his or her employment with the Company shall be employment-at-will, which can be terminated at any time, without prior notice or cause, by either Employee or the Company. No act, statement or conduct, of any nature whatsoever, of any representative of the Company shall alter the nature of Employee's at-will employment unless it is in writing, specifically refers to and supersedes this section, and is signed by an officer of the Company.

**Section XII. Amendment; Waiver.**

No amendment, modification, or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed by each of the parties hereto. Any waiver by any party or consent by any party to any breach of or any variation from any provision of this Agreement shall be valid only if in writing and only in the specific instance in which it is given, and such waiver or consent shall not be construed as a waiver of any subsequent breach or any other provision or as a consent with respect to any similar instance or circumstance.

**Section XIII. Entire Agreement.**

This Agreement, including Schedule A, constitutes and expresses the entire agreement of the parties hereto concerning its subject matter. There are no agreements, written or oral, express or implied, between the parties hereto, concerning the subject matter hereof, except the agreement set forth in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the earliest date written below.

Date: 9/20/99

INTERNET SECURITY SYSTEMS, INC.

By: Shirley Palmer  
Name: Shirley Palmer  
Title: HR Administrator

EMPLOYEE

Date: 09/20/1999

Chris D. Kobsa  
Signature

Chris D. Kobsa  
Print Name

257-77-9972  
Social Security Number



SCHEDULE A

1. Confidential Information. Except as set forth below, I acknowledge at this time that I learned nothing about the business or the Confidential Information or Inventions of the Company or the Associated Companies prior to my employment with the Company (if none, so state):

2. Prior Inventions. Except as set forth below, I acknowledge at this time that I have not, prior to my employment with the Company, made or reduced to practice (alone or jointly with others) any Inventions (if none, so state):

3. Conflicting Relationships. Except as set forth below, I acknowledge that I have no current or prior agreements, relationships, or commitments that conflict with my relationship with the Company under this Agreement (if none, so state):

DATE:

09/20/1999

Signature

Print Name

Social Security Number